IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1352 of 2007

Mari .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by the Secretary to Government
   Home, Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The District Collector and
   District Magistrate
   Tiruvannamalai District
   Tiruvannamalai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus to call for the records in D.O.No.38/2007-C2 dated 18.8.2007 passed by 2nd Respondent approved and confirmed by 1st respondent set aside the same, direct the respondents to produce the body of the petitioner viz. Mari who has been detained and confined in the Central Prisson at Vellore in TPDA.No.5206 before this Hon'ble Court set this detenu Mari at liberty.

For Petitioner : Mr.T.R.Radhakrishnan
For Respondents: Mr.P.Kumaresan
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Mari, son of Arjunan, as the said authority arrived at the subjective satisfaction that the said detenu is a

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Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against him by the second respondent in D.O.No.38/2007-C2, dated 18.8.2007, set aside the same and to direct the respondents to produce the body of the detenu, now detained at Central Prison, Vellore before this Court and set him at liberty.

3.1. On the basis of a complaint lodged by one Vijayakumar that on 9.7.2007 at about 10.00 hours, when he was proceeding on Tirukoilur Road for his personal work, the detenu and two others threatened him at the knife point and forcibly took Rs.500/- from his shirt pocket and also threatened the public who came for his rescue that they would be killed and hurled the soda water bottles against them and made them to run on all sides seeking shelter resulting in traffic dislocation, a case was registered in Crime No.223/2007 on the file of Tiruvannamalai East Police Station, for the offence punishable under Section 392 IPC.

3.2. The second respondent, taking note of the above case as a ground case and four adverse cases pending against the detenu in Crime Nos. 147, 215, 216 and 217 of 2007 on the file of Tiruvannamalai East Police Station for the offences punishable under Sections 294(b), 379 and 387 IPC and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 18.8.2007 on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the mother of the detenu in her representation dated 3.9.2007 that the detenu was taken by the police attached to Tiruvannamalai East Police Station on 5.7.2007 and not on 9.7.2007, as mentioned in the detention order, was not considered in the rejection order dated 14.9.2007.

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5. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 9.7.2007 with respect to the ground case, in the representation of the mother of the detenu dated 3.9.2007, she had specifically stated that the detenu was taken on 5.7.2007 by the Police and was kept under their custody till 9.7.2007 and thereafter, a false case was foisted against him. However, the first respondent, while passing the order of rejection dated 14.9.2007 rejecting the representation of the detenu's mother dated 3.9.2007, had not considered the contention raised by the mother of the detenu as to the arrest of the detenu.

6. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention dated 18.8.2007 is vitiated and the same is set aside. The detenu Mari is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to Government
   State of Tamil Nadu
   Home, Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The District Collector and
   District Magistrate
   Tiruvannamalai District
   Tiruvannamalai.

3. The Superintendent
   Central Prison
   Vellore.

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4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order),
   Secretariat, Fort St. George,
   Chennai-9.

Bvr (co)

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